

REMARKS

I. Amendments to the Claims

Claims 17-32 remain pending and under examination. Applicant amends claims 17, 24, and 25 to address informalities and not for reasons related to patentability.

II. Office Action

Applicant respectfully traverses the following objection and rejection:

(a) objected to claims 17, 24, and 25 because of informalities; and

(b) rejected claims 17-32 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,127,669 ("Platenberg") in view of U.S. Patent No. 6,714,518 ("Weis").

III. Response to Objection and Rejection

A. Objection to Claims 17, 24, and 25

The Office Action, on pages 2 and 3, objected to claims 17, 24, and 25 because of informalities. In response, Applicant has amended these claims to address the informalities, and requests withdrawal of the objection.

B. Rejection of Claims 17-32 under 35 U.S.C. § 103(a)

Applicant requests reconsideration and withdrawal of the rejection of claims 17-32 as being unpatentable over Platenberg in view of Weis, because the Office Action has not established a *prima facie* case of obviousness.

The Office Action has not properly resolved the *Graham* factual inquiries, the proper resolution of which is the requirement for establishing a framework for an objective obviousness analysis. See M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as reiterated by the U.S. Supreme Court

in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). Here, a *prima facie* case of obviousness has not been established, because the scope and content of the prior art has not been properly determined, nor have the differences between the claimed invention and the prior art been properly ascertained. The burden thus remains with the Examiner.

Platenberg and Weis, taken alone or in combination, do not disclose or suggest at least Applicant's claimed "method of providing extra traffic paths in a communication network comprising at least two protection channels associated to respective transmission channels," as recited in claim 17, or a "communication network comprising: at least two protection channels associated to respective transmission channels," as recited in claim 25.

The Office Action cited Fig. 2 of Platenberg (see Office Action, page 4) and erroneously characterized Applicant's claimed "at least two protection channels" to Platenberg's Optical Transceiver Units (OTU) 102(c) and 102(d). See Platenberg, Fig. 2. The Office Action incorrectly equated a communication node of a communication channel with the communication channel itself, which is the combination of the nodes and links that connect two communication end points. That is, in Platenberg, OTU 102(c) and 102(d) do not constitute two protection channels. Instead, OTU 102(c) and 102(d) are parts of one communication channel which connects network A 112(a) and network B 112(b), and which also comprises other parts, e.g., communication links 116(a), 114(c), 106(b), 114(d), and 116(b), as well as combiner/splitters 110(a) and 110(b). See Platenberg, col. 3 line 61 to col. 4, line 40; See *also* Platenberg, Figs. 1 and 2.

Moreover, while admitting that Platenberg does “not expressly disclose a sub-network connection protection scheme” (Office Action, pp. 4 and 7), the Office Action applied Weis to allegedly teach a sub-network connection protection scheme at col. 4, lines 22-23. See Office Action, pp. 4 and 7. Regardless of whether Weis teaches a sub-network connection protection scheme, to which Applicant does not concede, Weis still does not cure the deficiencies of Platenberg in that it also does not teach or suggest at least the above-quoted features of independent claims 17 and 25. Specifically, Weis does not teach or suggest at least the claimed “at least two protection channels associated to respective transmission channels,” as recited in claims 17 and 25. Instead, Weis discusses a “telecommunications network [that] is logically structured based on a hierarchy with at least two multiplex layers.” Weis, Abstract (emphases added).

Therefore, in light of the admitted deficiencies in Platenberg, the failure of Weis to cure those deficiencies, and the reasoning just presented, it is clear that there is no evidence that one of ordinary skill in the art could or would have developed Applicant’s claimed invention solely from the teachings of Platenberg in combination with Weis, with or without the knowledge available at the time of the present invention.

Thus, the Office Action has neither properly determined the scope and content of the prior art, nor properly ascertained the differences between the claimed invention and the prior art. Independent claims 17 and 25 are therefore not obvious over Platenberg and Weis, whether taken alone or in combination. Independent claims 17 and 25 should therefore be allowable. Dependent claims 18-24 and 26-32 should also be allowable at least by virtue of their respective dependence from base claim 17 or 25,

and because they recite additional features not taught or suggested by Platenberg and Weis. Applicant therefore respectfully requests withdrawal of the rejection.

IV. Conclusion

Applicant respectfully requests reconsideration and withdrawal of the objection and rejection. Pending claims 17-32 are in condition for allowance, and Applicant requests a favorable action.

The Office Action contains a number of statements reflecting characterizations of the claims and the cited references. Regardless of whether any such statements are identified herein, Applicant declines to automatically subscribe to any such statements or characterizations in the Office Action.

If there are any remaining issues or misunderstandings, Applicant requests the Examiner telephone the undersigned representative to discuss them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: October 15, 2009

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